

PRESS RELEASE

Decision No. 2022-1003 QPC of 8 July 2022

(Access to medically assisted procreation)

The Constitutional Council rules that the legislative provisions opening access to medically assisted procreation to couples consisting of one man and one woman or two women, and to unmarried women, conform with the Constitution

The purpose of the application for a priority preliminary ruling on the issue of constitutionality (*question prioritaire de constitutionnalité, QPC*)

The Constitutional Council received a referral on 16 May 2022 from the Conseil d'État of an application for a priority preliminary ruling on the issue of constitutionality relating to the conformity of Article L. 2141-2 of the Public Health Code, in its formulation resulting from Act No. 2021-1017 of 2 August 2021 on bioethics, with the rights and freedoms guaranteed by the Constitution.

These provisions open access to medically assisted procreation to couples consisting of a man and a woman, or two women, and to unmarried women. They thus deprive single men, or couples formed of two men, of this access. Consequently, persons born female in the civil register who have obtained a change in their gender designation while maintaining their gestational capacity are excluded.

Criticism made concerning these provisions

The applicant association criticised these provisions for denying access to medically assisted procreation to single men, or couples formed of two men, even though those who, having been born female as recorded in the civil register, have changed their gender designation, and may be able to become pregnant. According to this association, these provisions thus instituted an unjustified difference in treatment between persons with gestational capacities according to their gender designation in the civil register and were thus contrary to the principles of equality before the law and equality between men and women.

Review of the provisions subject to the QPC

In today's ruling, the Constitutional Council recalls that it is at all times possible for the legislator, ruling within their jurisdiction, to adopt new provisions for which they determine the appropriate nature, and to amend previous texts or to

repeal them by substituting other provisions, if necessary. However, it is on the condition that the exercise of this power does not result in depriving requirements of a constitutional nature of legal guarantees. Article 61-1 of the Constitution does not confer on the Constitutional Council a general mandate for judgements that is similar to that of Parliament, but only empowers it to rule on the conformity of the legislative provisions submitted for its consideration with the rights and freedoms guaranteed by the Constitution.

According to Article 6 of the Declaration of Human and Civic Rights of 1789, the law “*must be the same for all, whether it protects or punishes*”. The principle of equality does not preclude the legislator from regulating different situations differently, or from derogating from equality on grounds of general interest, provided that, in either case, the resulting difference in treatment is directly related to the purpose of the law establishing it.

In this respect, the Constitutional Council notes that it is clear from the preparatory work on the disputed provisions that, in adopting these provisions, the legislator intended to allow equal access for women to medically assisted procreation, without distinction linked to their marital status or sexual orientation. In doing so, the legislator considered, in the exercise of their jurisdiction, that the difference in situation between men and women, with regard to the rules of the civil registry, could justify a difference in treatment, in relation to the purpose of the law, as regards the conditions of access to medically assisted procreation. It is not for the Constitutional Council to substitute its assessment for that of the legislator on the taking into account, in this matter, of such a difference in situation.

For these reasons in particular, the Constitutional Council finds the disputed provisions to conform with the Constitution.

Title: Association Groupe d’information et d’action sur les questions procréatives et sexuelles [Access to medically assisted procreation]